

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUSTIN MARK FLYING,

Defendant.

**CR 10-05-GF-BMM-01**

**ORDER ADOPTING MAGISTRATE  
JUDGE’S FINDINGS AND  
RECOMMENDATIONS TO REVOKE  
DEFENDANT’S SUPERVISED RELEASE**

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on May 4, 2016. (Doc. 67.) Neither party filed objections. When a party makes no objections, the Court need not review de novo the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1986). This Court will review Judge Johnston’s Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston conducted a revocation hearing on May 3, 2016. (Doc. 66.) Flying admitted to having violated two conditions of his supervised release by committing a new crime and associating with a person engaged in criminal activity. (*Id.*) The Government dismissed the third alleged violation. (*Id.*) Judge Johnston found the evidence sufficient to establish that Flying had violated the conditions of his supervised release. (*Id.*)

Judge Johnston recommends this Court revoke Flying's supervised release. (Doc. 67.) Judge Johnston recommends that the Court sentence Flying to four months imprisonment, with 28 months of supervised release to follow. (*Id.*) Judge Johnston further recommends that this Court include as a condition of Flying's supervised release that he be required to reside in a residential reentry center. (*Id.*)

Flying's criminal history category is IV, the current violation is a Grade C, and the underlying offense is a Class C felony. The statutory range is a maximum of 24 months. The statutory and guideline term of supervised release is 32 months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

This Court finds no clear error in Judge Johnston's Findings and Recommendations. Flying's current violation is serious in nature. A sentence of four months imprisonment with 28 months supervised release to follow is sufficient, but not greater than necessary.

**IT IS HEREBY ORDERED** that Judge Johnston's Findings and Recommendations (Doc. 67) is ADOPTED IN FULL. **IT IS FURTHER ORDERED** that Defendant Dustin Mark Flying shall be sentenced to **four months imprisonment with 28 months of supervised release to follow.**

The special conditions contained in the judgement, which Judge Johnston read in open court, shall be imposed.

The following condition shall also be imposed:

The defendant shall reside in a Residential Reentry Center (RRC) under contract to the United States Bureau of Prisons, in the pre-release component, for a period of 180 days. The defendant shall abide by all rules and regulations of the center and complete successfully any programming as deemed appropriate by the United States Probation Office.

DATED this 25th day of May, 2016.



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Brian Morris  
United States District Court Judge